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5 Attorneys for Defendants
CITY OF OAKLAND, et al.
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 DANIEL SPALDING, KATHARINE
LONCKE, DANIELLE LOPEZ GREEN,
13 ADRIAN DRUMMOND-COLE, individually
and on behalf of all others similarly situated,
14

15 Plaintiffs,

16 v.

17 CITY OF OAKLAND, COUNTY OF
ALAMEDA, ANTHONY BATTS, HOWARD
JORDAN, JEFF ISRAEL, ERIC
18 BRESHEARS, EDWARD TRACEY,
ANTHONY TORIBIO, DAVID DOWNING,
19 ERSIE JOYNER, MIKE POIRIER, DARRIN
ALLISON, GREGORY AHERN, individually
20 and in their official capacities, and DOES 1-
250, inclusive,
21

22 Defendants.

Case No. C11-02867 TEH

**~~PROPOSED~~ STIPULATION AND
ORDER**

23 Counsel for the City of Oakland defendants has determined that the answer filed
24 on behalf of the City of Oakland defendants inadvertently failed to include affirmative
25 defenses.

26 The Plaintiffs and the City of Oakland Defendants, by and through their respective

1 counsel, agree and stipulate as follows:

2
3 The affirmative defenses attached hereto as Exhibit A shall be deemed filed and
4 asserted by the City of Oakland defendants as of August 29, 2011, the date their answer
5 to the plaintiffs' complaint was filed.

6
7 **IT IS SO STIPULATED**

8
9 Dated: 12/9/11

10 By: Rachel Lederman
11 RACHEL LEDERMAN
12 Attorneys for Plaintiffs,
13 DANIEL SPALDING, et al.

14 Dated:

15 BARBARA J. PARKER, City Attorney
16 RANDOLPH W. HALL, Chief Assistant City Attorney
17 WILLIAM E. SIMMONS, Supervising Trial Attorney

18 By: /s/ William E. Simmons
19 Attorneys for Defendants,
20 CITY OF OAKLAND, et al.

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22 **IT IS SO ORDERED.**

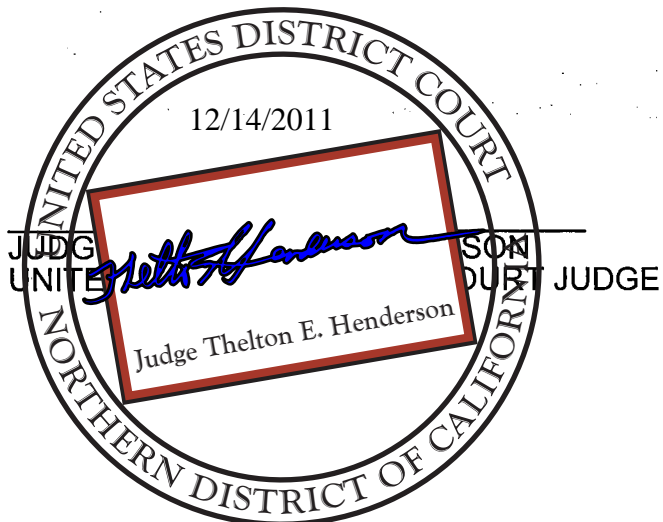


EXHIBIT A

AFFIRMATIVE DEFENSES

I.

AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that the complaint fails to state a claim upon which relief can be granted.

II.

AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege, on information and belief, that plaintiffs did not exercise ordinary care, caution, or prudence to avoid the alleged events; consequently, the subsequent injuries or damages, if any claimed were proximately caused by and contributed to by plaintiffs' comparative negligence, and any damages they might otherwise be entitled to should be proportionately reduced by the degree of that negligence.

III.

AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that the injuries and damages plaintiffs complain of resulted from the acts and/or omissions of others, or acts of God, and without any fault on the part of defendants.

IV.

AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that any party or individual who contributed to and/or caused the alleged injuries and damages was not acting as its agent or with its knowledge or within the course and/or scope of employment with defendant CITY OF OAKLAND.

V.

AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that, to the extent that plaintiffs may attempt to allege state claims, these are barred by all applicable California Government Code protections and immunities, including, but

1 not limited to, sections 815 through 900. Said sections are pleaded as though fully set
2 forth herein.

3 **VI.**

4 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
5 allege that all of the actions of defendants were undertaken in good faith and with the
6 reasonable belief that such actions were valid, necessary, reasonable, lawful and
7 constitutionally proper, entitling defendants to the qualified immunity of good faith.

8 **VII.**

9 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
10 defendants allege that, if they in any fashion caused the injuries or damages alleged,
11 although such liability is expressly denied herein, their acts and/or omissions were
12 reasonable and privileged.

13 **VIII.**

14 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,
15 defendants allege, on information and belief, that plaintiffs failed to mitigate damages.

16 **IX.**

17 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
18 allege that, to the extent that plaintiffs allege or assert matters not contained in a legally
19 sufficient claim filed by them, this action is barred by the claims requirements set forth in
20 California Government Code Section 905 et seq.

21 **X.**

22 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
23 allege that this action is barred, under California Government Code § 945.6, by plaintiffs'
24 failure to file their action within six months after denial of their claim by defendants.

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XI.

AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that this action is barred by all applicable statutes of limitations.

XII.

AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that this action is barred by the doctrine of primary assumption of the risk.

XIII.

AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that plaintiffs lack standing to bring the claims alleged.